TAN KOK TECK v. LIM SIAN NGO

[O.C.J. (Choor Singh J.) June 13, 1974]
[Singapore — Divorce No. 440 of 1973]

Family Law — Nullity of marriage — Petition for — Respondent aged 15 years 5 months at time of marriage — Marriage according to Chinese customary rites — Whether void under Women's Charter (Cap. 47), ss. 9 and 20.

The parties to this petition for nullity of marriage were married according to Chinese customary rites on 13.12.66 when the respondent was aged 15 years 5 months. The ground upon which it was sought to have the marriage declared null and void under section 9 of the Women's Charter was that at the date of the marriage the respondent was under the age of 18 and the marriage was not authorised by licence of the Minister as provided under section 20 of the Women's Charter.

At the date of the marriage section 9 provided that a marriage purported to be solemnized under Part III of the Charter where either of the parties was under the age of 18 would be invalid unless authorised by a licence granted by a Minister.

Section 9 of the Charter was amended by Act 9 of 1967 to apply to any marriage purported to be solemnized in Singapore, the qualification relating to Part III being deleted.

Held: the original unamended section 9 of the Charter was the relevant section and as the marriage in question took place according to Chinese customary rites and not in accordance with Part III of the Charter, this section 9 was therefore not applicable. Neither was the amended section 9 applicable as it could not have been the intention of Parliament to invalidate existing marriages and it was not retrospective. The marriage was therefore valid.

Petition dismissed.

DIVORCE.

N. C. Goho for the appellant.

Ang Koon Hian (Miss) for the respondent.

Choor Singh J.: This is a petition for nullity of marriage. The facts are these. The petitioner married the respondent on the 13th December 1966 in Singapore according to Chinese customary rites. On that date the respondent was 15 years and 5 months of age having been born on the 10th July 1951. The ground on which it is sought to have the marriage declared null and void is that the respondent was, at the date of marriage, under the age of 18 years and that as the said marriage was not authorised by licence granted by the Minister under the provisions of section 20 of the Women's Charter, the marriage was void under section 9 of the Charter.

At the date of the marriage section 9 of the Women's Charter was in the following terms: —

"9. Any marriage purported to be solemnized under this Part of the Ordinance shall be invalid if at the date of the marriage either party is under the age of eighteen years unless the solemnization of such marriage was authorized by a licence granted by the Minister under the provisions of section 20 of this Ordinance."

In 1967 section 9 was amended by Act 9 of 1967 and it now reads as follows: —

"9. Any marriage purported to be solemnized in Singapore shall be void if at the date of the marriage either party is under the age of eighteen years unless the solemnization of such marriage was authorized by a licence granted by the Minister under the provisions of section 20 of this Act."

It will be seen that at the date of the marriage, section 9 was only applicable in cases where the marriage was solemnized under the Charter *i.e.* under Part III of the Charter. The marriage which is the subject of these proceedings was a Chinese customary marriage and was not a marriage solemnized under Part III of the Charter. Section 9, as it stood, had therefore no application to this marriage, and in its present form, section 9 is again inapplicable to this marriage because it can have no retrospective effect. In amending section 9 in 1967 it could never have been the intention of Parliament to invalidate existing valid marriages. In the result, the marriage in question is a perfectly valid one. As there was no other ground for declaring the marriage to be void the petition was dismissed.

Petition dismissed.

Solicitors: *S. C. Goho & Co.; Director of Legal Aid.*

RE ESTATE OF LIU SINN MIN, DECD.

[O.C.J. (Choor Singh J.) June 29, 1974]
[Singapore — Originating Summons No. 404 of 1973]

Family Law — Chinese married under Civil Marriage Ordinance who subsequently contracts a second marriage according to personal law — Whether marriage valid — Whether children to be deemed legitimate — Marriage not a void marriage within s. 93(2) of the Women's Charter — Civil Marriage Ordinance, 1940, ss. 4 and 5 — Women's Charter (Cap. 47), ss. 4, 5, 6 and 93.

In this case the deceased had married one Ho June Chin under the Civil Marriage Ordinance, 1940. Subsequently he contracted an union with one Chai Siew Hong and had three children from her. After his death Ho June Chin applied for letters of administration. A caveat was lodged by Chai Siew Hong claiming that her three children were the lawful children of the deceased and were entitled to a share in his estate. Ho June Chin and her children thereupon commenced these proceedings for the determination of the question whether the defendants, the children of Chai Siew Hong, were entitled to inherit in the estate of the deceased.

Held: (1) the deceased had by contracting a statutory marriage in 1941 divested himself of his right to take a *t'sip*;

(2) even assuming that the deceased had not lost or abandoned his right to take a *t'sip* under his personal law, the evidence in this case was insufficient to establish a Chinese secondary marriage between the deceased and Chai Siew Hong;

(3) "marriage" in the expression "void marriage" in subsection (2) of section 93 of the Women's Charter does not include the concept of a Chinese secondary marriage;

(4) the defendants in this case were not the children of a void marriage within the meaning of section 93(2) of the Women's Charter and they were therefore not entitled to share in the estate of the deceased.

Cases referred to:-

(1) *Ross Smith* v. *Ross Smith* [1963] A.C. 280, 314.

(2) *De Reneville* v. *De Reneville* [1948] P. 100.

(3) *Salvesen* v. *Administrator of Austrian Property* [1927] A.C. 641 at p. 653.

(4) *Hyde* v. *Hyde* (1866) L.R. 1 P. & D. 130; [1861-73] All E.R. Rep. 175.

(5) *Re Loh Toh Met deceased* [1961] M.L.J. 234 at p. 236.

(6) *Er Gek Cheng* v. *Ho Yin Seng* [1949] M.L.J. 171 at p. 174.

(7) *Tay Geok Yap & Ors.* v. *Tan Lian Cheow* [1965] 1 M.L.J. 102 at p. 112.

(8) *Re Ding Do Ca* [1966] 2 M.L.J. 220.